IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO.2799 OF 1987

Biddle Sawyer Private Ltd. ..Plaintiff.
Vs.
Lords Homeopathic Laboratory ..Defendant.

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Mr. Manish Sourastri with Utkarsh Tiwari i/b Shantilal & Co. for the Plaintiffs.
None for the Defendant.

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CORAM: DR. D.Y. CHANDRACHUD, J.
15th September, 2006.

P.C. :

1. The suit has been instituted by the Plaintiff for seeking an order of injunction restraining the Defendant from infringing the Plaintiff's registered trademark 'SLIMERAX' bearing No.292153 or from using in relation to any pharmaceutical medicinal or homeopathic preparations the mark 'SLIMEX' or any other mark deceptively similar thereto so as to infringe the Plaintiff's registered trademark. Relief upon a passing off action has also been sought. On 29th November, 1972 the Plaintiff applied for and obtained registration of the trademark, by the name 'SLIMERAX' In respect

of pharmaceutical preparations under No. 292153. The Plaintiff has averred that the trademark 'SLIMERAX" has been used in a product containing fenfluramine hydro chloride which is made for reducing obesity. The Plaintiff claims to have advertised and published its product extensively, consequent upon which it has been stated that the product has acquired a goodwill amongst the trade and the public. In or about April, 1987, an advertisement was issued by the Defendant offering for sale a medicinal preparation under the trademark 'SLIMEX' for weight reduction. The case of the Plaintiff is that the Defendant used a confusingly and/or deceptively similar trademark viz. 'SLIMEX' to mark its medicinal preparations meant for similar purposes. The Plaintiff addressed a notice through its advocate on 8th May, 1987 to the Defendant, calling upon the Defendant to cease and desist from doing so. The Defendant replied by a letter dated 23rd May, 1987 objecting to the demand of the Plaintiff.

2. The Plaintiff is a registered proprietor of the trademark 'SLIMERAX' under No.292153 for the material period in respect of

pharmaceutical preparations falling in class 5. The Plaintiff has used the trademark in respect of goods for which the mark was registered during the material time. The case of the Plaintiff is that the Defendant has used the trademark 'SLIMEX' in respect of medicinal preparations for similar use, which mark is deceptively and/or confusingly similar. According to the Plaintiff, the use of this deceptively similar trademark constitutes an infringement of Plaintiff's right with respect to its registered trademark. Apart from an injunction, the Plaintiff has sought damages in the sum of Rs.51,000/-.

3. At the hearing of the suit, the claim for damages has not been pressed. A decree has been sought in terms of prayer clauses (a) and (b). The Defendant has been served with the writ of summons. No written statement has been filed. The Plaintiff has filed an affidavit in lieu of the examination-in-chief of its witness and a compilation of documents which is taken on record. Permission is granted to the Plaintiff to lead secondary evidence in support of its case having regard to the contents of paragraph 1 of

the affidavit in lieu of the examination-in-chief. The claim of the Plaintiff is duly proved. In the circumstances, the suit shall stand decreed in terms of prayer clauses (a) and (b).